



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-81,581-02

EX PARTE DEMONTRELL MILLER, Applicant

**ON APPLICATION FOR WRIT OF HABEAS CORPUS
CAUSE NO. 241-1251-08-A IN THE 241ST DISTRICT COURT
SMITH COUNTY**

Per curiam. NEWELL, J., filed a dissenting opinion, joined by MCCLURE, J.

ORDER

This is a subsequent application for a writ of habeas corpus filed pursuant to the provisions of Texas Code of Criminal Procedure article 11.071, § 5.¹

In November 2009, Applicant was convicted of the offense of capital murder for killing two-year-old K.P. *See* TEX. PENAL CODE ANN. § 19.03(a)(8). The jury answered the special issues submitted under Article 37.071 and the trial court, accordingly, set Applicant's

¹ Unless we specify otherwise, all references in this order to "Articles" refer to the Texas Code of Criminal Procedure.

punishment at death. This Court affirmed Applicant's conviction and sentence on direct appeal and denied his initial Article 11.071 application for writ of habeas corpus. *Miller v. State*, No. AP-76,270 (Tex. Crim. App. May 23, 2012) (not designated for publication); *Ex parte Miller*, No. WR-81,581-01 (Tex. Crim. App. Apr. 15, 2015) (not designated for publication). Applicant filed his first subsequent writ application in the trial court on October 19, 2018.

Applicant presents eleven allegations in the instant subsequent application. In Claim 1, Applicant alleges that the State violated his constitutional rights because his conviction was based on false, misleading, and scientifically invalid testimony. In Claim 2, Applicant contends that the State violated his due process right to a fundamentally fair trial when it introduced "junk science." In Claim 3, Applicant asserts that newly available scientific evidence entitles him to relief under Article 11.073. In Claims 4 and 5, Applicant avers that the State failed to disclose potentially exculpatory evidence, violating Applicant's due process rights under *Brady v. Maryland*, 373 U.S. 83 (1963). In Claim 6, Applicant alleges that "[a]bsent the State's false, misleading, and unreliable expert medical testimony, the remaining medical evidence at trial establishes that [he] is innocent of murder."

In Claim 7, Applicant contends that the prosecution injected race into the trial, violating Applicant's Fourteenth Amendment right to due process. In Claim 8, Applicant asserts that the jury verdict was critically tainted by racial bias. In Claim 9, Applicant alleges that he received ineffective assistance of counsel at both phases of his trial, on appeal, and

in his initial Article 11.071 writ proceedings. In Claim 10, Applicant avers that the State improperly suppressed admissible testimony from mitigation witnesses in violation of the Due Process Clause. In Claim 11, Applicant alleges that the prosecution made impermissible statements during its closing arguments in both the guilt and punishment phases of the trial, in violation of Applicant's due process rights.

We have reviewed the subsequent application and find that Applicant has failed to satisfy the requirements of Article 11.071, § 5(a). Accordingly, we dismiss the subsequent application as an abuse of the writ without considering the claims' merits.

IT IS SO ORDERED THIS THE 30TH DAY OF JUNE, 2021.

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